



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

45 CFR Part 1330

RIN 0985-AA16

National Institute on Disability, Independent Living, and Rehabilitation Research

AGENCY: Administration for Community Living, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Community Living (ACL) within the Department of Health and Human Services (HHS or the Department) is proposing to amend its regulations for the National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR). These minor amendments to NIDILRR's peer review criteria will allow NIDILRR to better evaluate the extent to which grant applicants conduct outreach to and hire people with disabilities and people from other groups that traditionally have been underserved and underrepresented, and emphasize the need for engineering research and development activities within NIDILRR's Rehabilitation Engineering Research Centers (RERC) program.

DATES: To be assured consideration, comments must be received at the address provided below, no later than 11:59 p.m. **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: You may submit comments through the Federal eRulemaking Portal:

<https://www.regulations.gov>. Follow the "Submit a comment" instructions.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

Inspection of Public Comments: All comments received before the close of the comment

period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>. Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Phillip Beatty, Director, NIDILRR Office of Research Sciences, Administration for Community Living, Department of Health and Human Services, 330 C Street, S.W, Washington, DC 20201. Email: phillip.beatty@acl.hhs.gov, Telephone: (202) 795-7305.

SUPPLEMENTARY INFORMATION:

I. Background

The HHS regulation for National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) programs was developed and finalized in 2016 following the transfer of NIDILRR to ACL and HHS from the Department of Education, as required by the Workforce Innovation and Opportunity Act (WIOA) of 2014. NIDILRR's mission is to generate new knowledge and to promote its effective use to improve the abilities of individuals with disabilities to perform activities of their choice in the community and to expand society's capacity to provide full opportunities and accommodations for individuals with disabilities. As the primary research enterprise within ACL, NIDILRR's mission is highly complementary to the overarching mission of ACL to maximize the independence, well-being, and health of older adults, people with disabilities across the lifespan, and their families and caregivers. NIDILRR programs address a wide range of disabilities and impairments across all age groups and promote health and function, community living and participation, and employment. To accomplish these

goals, NIDILRR invests in research, knowledge translation, and capacity-building activities through its discretionary grant-funding authorities.

The proposed rule would provide minor but important updates to provisions within §§ 1330.23 and 1330.24 of the NIDILRR rule (45 CFR part1330).

The first update to 45 CFR part1330 is directly responsive to Executive Order 13985 *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. The purpose of the update is to better evaluate, through the peer review of grant applications, the extent to which grant applicants conduct outreach to and hire people who are members of specific groups that have traditionally been underserved and underrepresented in research. Applicant refers to organizations such as universities or other organizations that apply for NIDILRR grants. NIDILRR's criterion that focuses on applicants' proposed "Project Staff" (45 CFR 1330.24(n)) currently combines a significant number of underrepresented groups into one list ("...based on race, color, national origin, gender, age, or disability), and asks reviewers to broadly evaluate the extent to which the grant applicant encourages applications for employment from people who are members of those groups in the list. This format does not allow reviewers to distinctly evaluate applicants' outreach and hiring practices for people with disabilities, or for other populations highlighted in the existing list.

To better promote applicants' hiring of people with disabilities, and people from other underserved communities, 45 CFR 1330.24(n) will be revised to separate these populations into two distinct peer review subcriteria. This disaggregation of people with disabilities and people from underserved communities into separate subcriteria will allow peer reviewers to more directly evaluate and score the extent to which grant applicants encourage the hiring of people in each of these distinct groups. ACL will make a conforming amendment to 45 CFR 1330.23(b) reflecting this revision to the selection criteria. While individuals live at the intersection of multiple populations or groups, ACL's planned disaggregated review of hiring practices will compel applicants to describe their outreach and hiring practices for people with disabilities and

other specific groups, separately and distinctly. ACL intends for grant applicants to respond to these disaggregated subcriteria with quantitative and/or qualitative information in the narrative of their proposal, and for peer reviewers to accordingly use this information to evaluate and score each individual application.

The second update to 45 CFR part 1330 is to better emphasize the need for engineering research and development (R&D) activities in NIDILRR's Rehabilitation Engineering Research Centers (RERC) program funding opportunities. The update will add a subcriterion under both the "Design of Research Activities" (45 CFR 1330.24(c)) and "Design of Development Activities" (45 CFR 1330.24(d)) that allow reviewers to evaluate the extent to which applicants are proposing engineering knowledge and methods as part of their RERC applications. The absence of such engineering-focused criteria have led to some RERC grants that are not optimally using the engineering R&D methods envisioned in the program's title and statute.

II. Required Regulatory Analyses

A. Executive Orders 12866 and 13563

EO 12866, "Regulatory Planning and Review," and EO 13563, "Improving Regulation and Regulatory Review," direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select regulatory approaches that maximize net benefits.

OMB determined that this rulemaking is not an economically significant regulatory action under these EOs. The preamble to this proposed rule describes that it is primarily procedural changes that would require Department expenditures to implement.

B. Regulatory Flexibility Act

The Department has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* The RFA requires an agency to describe the impact of a proposed rulemaking on small entities by providing an initial regulatory flexibility analysis, unless the agency determines that the proposed rule will not have

a significant economic impact on a substantial number of small entities, provides a factual basis for this determination, and proposes to certify the statement. 5 U.S.C. 603(a) and 605(b). The Department considers a proposed or final rule to have a significant economic impact on a substantial number of small entities if it has at least a three percent impact on revenue of at least five percent of small entities. The Department has determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on the operations of a substantial number of small entities.

C. Executive Order 13132 (Federalism)

EO 13132, “Federalism,” establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments or has Federalism implications. The Department has determined that this proposed rule would not impose such costs or have any Federalism implications.

D. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

HHS has analyzed this proposed rule in accordance with the principles set forth in EO 13175. HHS has tentatively determined that the proposed rule does not contain policies that would have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In accordance with the Department’s Tribal consultation policy, the Department solicits comments from tribal officials on any potential impact on Indian Tribes from this proposed action.

E. National Environmental Policy Act

HHS had determined that this proposed rule would not have a significant impact on the environment.

F. Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, 44 U.S.C. 3501–3521; 5 CFR part 1320, appendix A.1, the Department has reviewed this proposed rule and has determined that it proposes no new collections of information.

List of Subjects in 45 CFR Part 1330

Disability, Grant programs, Research.

Accordingly, ACL proposes to revise 45 CFR 1330.23 and 1330.24, to read as follows:

**PART 1330–NATIONAL INSTITUTE FOR DISABILITY, INDEPENDENT LIVING,
AND REHABILITATION RESEARCH**

1. The authority citation for part 1330 continues to read as follows:

Authority: 29 U.S.C. 709, 3343.

2. Amend § 1330.23 by revising paragraph (b) to read as follows:

§ 1330.23 Evaluation process.

* * * * *

(b) In considering selection criteria in § 1330.24, the Director selects one or more of the factors listed in the criteria, but always considers the factors in § 1330.24(n) regarding people with disabilities, and members of groups that have traditionally been underrepresented based on race, ethnicity, national origin, sex (including sexual orientation and gender identity), or age.

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2. Amend § 1330.24 by adding paragraphs (c)(5) and (d)(4) and revising paragraph (n) to read as follows:

§ 1330.24 Selection criteria.

* * * * *

(c) * * *

(5) The extent to which research activities use engineering knowledge and techniques to collect, analyze, or synthesize research data.

* * * * *

(d) * * *

(4) The extent to which development activities apply engineering knowledge and techniques to achieve development objectives.

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(n) *Project staff*. In determining the quality of the applicant's project staff, the Director considers one or more of the following factors:

(1) The extent to which the applicant encourages applications for employment from and hires people with disabilities.

(2) The extent to which the applicant encourages applications from, and hires people who are members of groups that have traditionally been underrepresented in research professions based on race, ethnicity, national origin, sex (including sexual orientation and gender identity), or age.

(3) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities.

(4) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project.

(5) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas.

(6) The extent to which the project staff includes outstanding scientists in the field.

(7) The extent to which key personnel have up-to-date knowledge from research or effective practice in the subject area covered in the priority.

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Dated: March 2, 2022.

Alison Barkoff,

Principal Deputy Administrator,

Administration for Community Living

Approved:

Xavier Becerra,

Secretary.

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